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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,698	11/05/2003	Ricardo Blank	8496-US	7089
74476	7590	06/01/2010		
Nestle HealthCare Nutrition 12 Vreeland Road, 2nd Floor, Box 697 Florham Park, NJ 07932			EXAMINER MAR CETICH, ADAM M	
			ART UNIT	PAPER NUMBER
			3761	
			NOTIFICATION DATE	DELIVERY MODE
			06/01/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/701,698

**Applicant(s)**

BLANK ET AL.

**Examiner**

Adam Marcetich

**Art Unit**

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 2,3,7,8,11-24,27-30 and 33-36  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Leslie Deak/  
Primary Examiner, AU 3761

/Adam Marcetich/  
Examiner, Art Unit 3761

Continuation of 3. NOTE: The amended claims filed 06 May 2010 are not being entered since they would require further search and consideration. Claims 2, 7, 20 and 30 have been amended to include the limitations of:  
[2] a cutting member that [comprises a center axis that is offset from a center axis of the connector device]; and  
[7, 20, 30] first and second rims located at [fixed] first and second distances  
[brackets indicate proposed amendments]

Examiner had not considered these limitations in the original search. For example, the claims were interpreted more broadly to include a cutting member with a center axis either concentric with or offset from the center axis of a cutting member.

Continuation of 11. does NOT place the application in condition for allowance because:

#### RESPONSE TO ARGUMENTS

Applicant's arguments filed 06 May 2010 have been fully considered but they are not persuasive.

Applicant submits that the cited art fails to teach a cutting member with a center axis offset from the center axis of a connector device, since each of Kawaguchi, Evans and Allanson disclose concentric connector devices and cutting members. Examiner notes that the limitation of non-concentric or offset center axes has not been entered, since it would change the scope of the claims as discussed above.

Applicant contends that the cited art fails to teach all limitations of claim 7, especially first and second rims located at fixed first and second distances. Applicant suggests that ring 60 and seal 70 of Allanson fails to remedy the deficiencies of Kawaguchi and Evans, since both ring 60 and seal 70 are adjustable relative to tube 10. Examiner notes that the limitation of fixed distances has not been entered, since it would change the scope of the claims as discussed above. Additionally, ring 60 and seal 70 remain in place when secured, and therefore may be broadly interpreted as being located at "fixed" distances.

Applicant reasons that Allanson fails to remedy the deficiencies of Kawaguchi and Evans, namely integrally formed first and second rims. Applicant reasons that lock ring 40 is pulled over lock ring stop 14 to retain its original shape and lie flush against the outer wall of elongate tube 10. Applicant finds that this requires moveable pieces and would not function properly if formed from integrally molded pieces. Examiner notes that a flexible, integrally formed rim is capable of performing the same function, namely sealing the inside of a container, by deforming when inserted through the outer wall of a container. Examiner finds motivation to form rims integrally, since this reduces the number of steps in both manufacture and use.

Applicant submits that Quinn, Schafer, Broman, Ninomiya and Rule each fail to remedy the deficiencies of the cited art, since each lacks a cutting member with an offset center axis. Here also, the limitation of an offset center axis has not been entered as discussed above.

Applicant contends that Ninomiya, Kawaguchi and Rule are directed to different problems and therefore one would not combine their teachings. Examiner notes that each of Ninomiya, Kawaguchi and Rule dispense liquids from pierced containers. That is, each forms and maintains fluid communication between the interior and exterior of a container while sealing with the container wall.

Examiner acknowledges that the proposed amendments are supported in the specification. However, a request for continued examination is required to enter the proposed amendments, since they change the scope of the claims.